

Edward C. Woltkamp d/b/a General Interiors and Painters Union Local 83, International Brotherhood of Painters and Allied Trades, AFL-CIO. Case 20-CA-22158

January 23, 1995

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND
TRUESDALE

On February 28, 1991, the National Labor Relations Board ordered the Respondent, *inter alia*, to make whole Gary Van Tuyl for his losses resulting from the Respondent's violation of Section 8(a)(3) and (1) of the Act.¹ The Board's Order was enforced by the United States Court of Appeals for the Ninth Circuit on October 29, 1993.²

On February 28, 1994,³ the Regional Director for Region 20 issued a compliance specification and notice of hearing alleging the amount of backpay due. The compliance specification, which was duly served on the Respondent, directed the Respondent to answer within 21 days of service pursuant to Sections 102.54 and 102.56 of the Board Rules and Regulations.⁴

On August 30, counsel for the General Counsel notified the Respondent by letter that it had failed to file an answer to the compliance specification and that an answer was required. The letter stated that a Motion for Summary Judgment would be filed if no answer was received by close of business on September 6.

On September 6, the Respondent forwarded a letter to Regional Attorney Joseph P. Norelli. The Respondent stated that it had "complied with everything that a Mr. John O'Hearn has requested except for payment that is said owed to Mr. Van Tuyl" and that the Respondent did "not know what you mean by an Answer to the Compliance Specification."⁵

On September 23, the General Counsel filed with the Board a Motion for Summary Judgment with supporting memorandum and exhibits. The motion states that the Respondent has failed and refused to file an answer to the compliance specification. The motion also notes that if the Respondent's September 6 letter is to be considered an answer to the compliance specification it does not meet the requirements for an answer under the Board's Rules and Regulations.

¹ 301 NLRB 1155.

² No. 93-70739, unpublished.

³ All dates are in 1994 unless otherwise specified.

⁴ The compliance specification further provided that "[t]o the extent that such Answer fails to deny allegations of the Compliance Specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them."

⁵ John O'Hearn is a field examiner who assists the compliance officer for Region 20.

On September 27, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations state, in pertinent part:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. . . . As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The compliance specification states that the Respondent shall, within 21 days from the date of the specification, file with the Regional Director for Region 20 an answer to the specification. The compliance specification further states that if the answer fails to deny the allegations of the specification in the manner

required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, the allegations shall be deemed to be true and the Respondent shall be precluded from introducing evidence controverting them.

The Respondent's September 6 letter does not constitute an answer within the meaning of the Board's Rules and Regulations. Thus, the Respondent's letter does not fairly meet the substance of the compliance specification, and does not set forth any alternative computations nor adequately explain the Respondent's failure to do so. See, e.g., *Challenge-Cook Bros. of Ohio*, 295 NLRB 435, 437-438 (1989); *Sneva's Rent-A-Car*, 270 NLRB 1316, 1317 (1984).

We therefore find that the Respondent has not filed an answer in accordance with the Board's Rules and Regulations and the allegations in the compliance

specification are deemed to be admitted to be true. *Stage Employees IATSE Local 41 (Theater of Stars)*, 287 NLRB 1363 (1988); *Transportation by La Mar*, 281 NLRB 508, 510 (1986); and *Rocky Mountain Insulation Co.*, 267 NLRB 752 fn. 2 (1983).

Accordingly, the Board grants the Motion for Summary Judgment and concludes that the amounts due to and payable on behalf of Gary Van Tuyl are as stated in the compliance specification.

ORDER

The National Labor Relations Board orders that the Respondent, Edward C. Woltkamp d/b/a General Interiors, Lodi, California, its officers, agents, successors, and assigns, shall make whole Gary Van Tuyl by payments to him and on his behalf as set forth in the compliance specification.